

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION

DARRYL S. KELLY,

Petitioner,

v.

CASE NO. 2:08-CV-964
JUDGE MARBLEY
MAGISTRATE JUDGE KING

WARDEN, SOUTHERN OHIO
CORRECTIONAL FACILITY,

Respondent.

OPINION AND ORDER

On April 7, 2010, the Magistrate Judge issued a *Report and Recommendation* recommending that the instant petition for a writ of habeas corpus pursuant to 28 U.S.C. §2254 be dismissed. Petitioner has filed objections to the Magistrate Judge's *Report and Recommendation*. For the reasons that follow, petitioner's objections are **OVERRULED**. The *Report and Recommendation* is **ADOPTED** and **AFFIRMED**. This action is hereby **DISMISSED**.

Petitioner objects to the Magistrate Judge's recommendation of dismissal of his claim that he was improperly sentenced as procedurally defaulted and without merit. He again argues that he was entitled to be sentenced to an aggregate term of ten years incarceration. He now contends that his convictions constituted allied offenses of similar import, and that for this reason, or because he was initially offered a plea agreement of ten years incarceration, the trial court improperly imposed consecutive terms of incarceration.

Pursuant to 28 U.S.C. §636(b), this Court has conducted a *de novo* review. For the reasons detailed in the Magistrate Judge's *Report and Recommendation*, petitioner's

arguments are not persuasive. Petitioner did not previously raise a claim that his convictions constituted allied offenses of similar import, violated the Double Jeopardy Clause, or that he was entitled to be sentenced to ten years incarceration because that was the prosecutor's initial plea offer. Petitioner may not now amend his petition to include new claims in his objections. Additionally, for reasons detailed by the Magistrate Judge, because petitioner failed to raise such a claim in the state courts, these claims, in any event, are procedurally defaulted.

For all the foregoing reasons, and for the reasons detailed in the Magistrate Judge's *Report and Recommendation*, petitioner's objections are **OVERRULED**. The *Report and Recommendation* is **ADOPTED** and **AFFIRMED**. The Clerk shall enter final judgment.

IT IS SO ORDERED.

s/Algenon L. Marbley
ALGENON L. MARBLEY
United States District Judge